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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,377	08/31/2001	Scott Seligman	DJORTH.138A	2158

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EXAMINER

PHAM, HUONG Q

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 07/02/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/945,377

Applicant(s)

SELIGMAN, SCOTT

Examiner

Huong Q. Pham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a) because they fail to show reference numbers 405a, 405b, 422, 442, as described in the specification. Also, the detail structure of stop 260 is unclear. It is unclear how stop 260 is secured to the aperture 435. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim 1 is objected to because of the following reason: " upper and lower hinge portions" lack proper antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-5, 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young, David E. et al in view of Paez. As for claim 1, Young, David E. et al shows every claimed feature of claim 1 (including a hinge deflector housing 14, 15), except for the recited upper portion, lower portion, and straps. Paez teaches these structures. In view of the teaching of Paez, it would have been obvious to an ordinary skill in the art at the time the invention was made to provide the device of Young, David E. et al with the recited upper portion, lower portion, and straps in order to secure the hinge assembly of Young, David E. et al to a wearer. Note that the housing of the hinge assembly of Young, David E. et al can deflect an interfering object. As for claims 4, 5 and 7, note that Paez shows a hinge deflector positioned on the medial side of the brace.

Claims 15, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Paze. As for claim 15, Paez shows every claimed feature of claim 15 including a shell 90, 92, a central recess (formed by plates 90, 92, and bosses 94), and projections 94 each having curved surface which can deflect objects. As for claims 17 and 18, note Figure 8-13 of Paez, and note that the plates 90 and 92, and upstanding bosses 94 together forming an elliptical shape hinge housing with an elliptical recess for receiving hinge components.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Paez as applied to claims 15, 17, 18, above, and further in view of Knoth, or Shook, or Mason et al. While Paze does not teach ribs for strengthening the shell, Knoth, or Shook, or

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Mason et al each teaches this structure. In view of the teaching of Knoth, or Shook, or Mason et al, it would have been obvious to an ordinary skill in the art at the time the invention was made to provide ribs to a shell for the purpose of strengthening the shell.

Claims 1-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the PCT publication WO 01/10360 A1. The PCT publication WO 01/10360 A shows every claimed feature of claims 1-10 and 12 (note that in Figure 1, the forward surface 35 of the outer cover 33 and the inner cover together form a recess to house the hinge assembly) , except for the recited straps. Note that the provision of straps in order to secure the brace to a wearer is well known in the art, and is only a matter of obvious engineering design choice, and therefore is not patentable over prior art.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6, 8-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Young, David E. et al. Note that Young, David E. et al shows every claimed feature of claims 6, 8-14. As for claims 9 and 10, note that the hinge housing of Young, David E.

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et al includes openings for connecting the shell to the knee brace hinge or to the knee brace. Note that the openings are "connected" to the knee brace.

Claims 1-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Bodine. Note that Bodine shows every claimed feature of claims 1-14 (note Figures 6- 8) of Bodine.

Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Paez. Note that Paez shows every claimed feature of claims 1-13 including hinge deflector and recess (for encasing portions of the hinge) formed by the plates 90 and 92 , recesses 96, and upstanding bosses 94.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Paez in view of Young, David E. et al, or Borig et al, or Kausek et al. While Paez does not show rear and front projections with different lengths, Young, David E. et al , Borig et al , and Kausek et al show this structure as recited. In view of the teaching of Young, David E. et al , Borig et al, or Kausek et al, it would have been obvious to an ordinary skill in the art at the time the invention was made to modify the rear projection of Paez in order to limit the range motion of the hinge.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huong Q. Pham whose telephone number is (703) 305-5129. The examiner can normally be reached on 6:30 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on (703) 308 - 2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

June 26, 2003


JUSTINE R. YU
PRIMARY EXAMINER